

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEROME JULATON, )  
Plaintiff(s), ) No. C07-2149 BZ  
v. ) ORDER SCHEDULING  
DTG OPERATIONS, INC., ) JURY TRIAL AND  
Defendant(s). ) PRETRIAL MATTERS

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Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

1. **DATES**

Trial Date: **Monday, 8/11/2008**, 5 days

Pretrial Conference: **Tuesday, 7/22/2008, 4:00 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 7/2/2008**

Last Day for Expert Discovery: **Friday, 5/23/2008**

Last Day for Expert Disclosure: **Friday, 5/16/2008**

Close of Non-expert Discovery: **Friday, 5/9/2008**

Hearing date for Motion to Certify Class: **Wednesday, 1/23/2008**

1       2.     DISCLOSURE AND DISCOVERY

2              The parties are reminded that a failure to voluntarily  
3 disclose information pursuant to Federal Rule of Civil  
4 Procedure 26(a) or to supplement disclosures or discovery  
5 responses pursuant to Rule 26(e) may result in exclusionary  
6 sanctions. Thirty days prior to the close of non-expert  
7 discovery, lead counsel for each party shall serve and file a  
8 certification that all supplementation has been completed.

9              In the event a discovery dispute arises, **lead counsel** for  
10 each party shall meet in person or, if counsel are outside the  
11 Bay Area, by telephone and make a good faith effort to resolve  
12 their dispute. Exchanging letters or telephone messages about  
13 the dispute is insufficient. The Court does not read  
14 subsequent positioning letters; parties shall instead make a  
15 contemporaneous record of their meeting using a tape recorder  
16 or a court reporter.

17              In the event they cannot resolve their dispute, the  
18 parties must participate in a telephone conference with the  
19 Court **before** filing any discovery motions or other papers.  
20 The party seeking discovery shall request a conference in a  
21 letter served on all parties not exceeding two pages (with no  
22 attachments) which briefly explains the nature of the action  
23 and the issues in dispute. Other parties shall reply in  
24 similar fashion within two days of receiving the letter  
25 requesting the conference. The Court will contact the parties  
26 to schedule the conference.

27       3.     MOTIONS

28              Consult Civil Local Rules 7-1 through 7-5 and this

1 Court's standing orders regarding motion practice. Motions  
2 for **summary judgment** shall be accompanied by a statement of  
3 the material facts not in dispute supported by citations to  
4 admissible evidence. The parties shall file a joint statement  
5 of undisputed facts where possible. If the parties are unable  
6 to reach complete agreement after meeting and conferring, they  
7 shall file a joint statement of the undisputed facts about  
8 which they do agree. Any party may then file a separate  
9 statement of the additional facts that the party contends are  
10 undisputed. A party who without substantial justification  
11 contends that a fact is in dispute is subject to sanctions.

12 A Chambers copy of all briefs shall be submitted on a  
13 diskette formatted in WordPerfect 6.1, 8, 9, 10 or 13  
14 (Windows), or may be e-mailed to the following address:  
15 bzpo@cand.uscourts.gov.

16 4. MEDIATION

17 By agreement of the parties, this matter has been  
18 assigned for mediation. The parties shall promptly notify the  
19 Court whether the case is resolved in mediation.

20 5. SETTLEMENT

21 This case has been referred for assignment to a  
22 Magistrate Judge to conduct a settlement conference during May  
23 or June of 2008 in the event the case is not resolved at the  
24 mediation. Counsel will be contacted by that judge's chambers  
25 with a date and time for the conference.

26 6. PRETRIAL CONFERENCE

27 Not less than thirty days prior to the date of the  
28 pretrial conference, the parties shall meet and take all steps

1 necessary to fulfill the requirements of this Order.

2 Not less than twenty days prior to the pretrial  
3 conference, the parties shall: (1) serve and file a joint  
4 pretrial statement, containing the information listed in  
5 **Attachment 1**, and a proposed pretrial order; (2) serve and  
6 file trial briefs, Daubert motions, motions in limine,  
7 proposed findings of fact and conclusions of law, and  
8 statements designating excerpts from discovery that will be  
9 offered at trial (specifying the witness and page and line  
10 references); (3) exchange exhibits, agree on and number a  
11 joint set of exhibits and number separately those exhibits to  
12 which the parties cannot agree; (4) deliver all marked trial  
13 exhibits directly to the courtroom clerk, Ms. Scott; (5)  
14 deliver one extra set of all marked exhibits directly to  
15 Chambers; and (6) submit all exhibits in three-ring binders.  
16 Each exhibit shall be marked with an exhibit label as  
17 contained in **Attachment 2**. The exhibits shall also be  
18 separated with correctly marked side tabs so that they are  
19 easy to find.

20 No party shall be permitted to call any witness or offer  
21 any exhibit in its case in chief that is not disclosed at  
22 pretrial, without leave of Court and for good cause.

23 Lead trial counsel for each party shall meet and confer  
24 in an effort to resolve all disputes regarding anticipated  
25 testimony, witnesses and exhibits. All Daubert motions,  
26 motions in limine, and objections will be heard at the  
27 pretrial conference. Not less than ten days prior to the  
28 pretrial conference, the parties shall serve and file any

1 objections to witnesses or exhibits or to the qualifications  
2 of an expert witness. Daubert motions and motion in limine  
3 shall be filed and served not less than twenty days prior to  
4 the conference. Oppositions shall be filed and served not  
5 less than ten days prior to the conference. There shall be no  
6 replies.

7 Not less than twenty days prior to the pretrial  
8 conference the parties shall serve and file requested voir  
9 dire questions, jury instructions, and forms of verdict. The  
10 following jury instructions from the *Manual of Model Civil*  
*Jury Instructions for the Ninth Circuit* (1997 ed.) will be  
11 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,  
12 3.1-3.3. Do not submit a copy of these instructions. Counsel  
13 shall submit a joint set of case specific instructions. Any  
14 instructions on which the parties cannot agree may be  
15 submitted separately. The Ninth Circuit Manual should be used  
16 where possible. Each requested instruction shall be typed in  
17 full on a separate page with citations to the authority upon  
18 which it is based. Proposed jury instructions taken from the  
19 Ninth Circuit Manual need only contain a citation to that  
20 source. Any modifications made to proposed instructions taken  
21 from a manual of model instructions must be clearly indicated.  
22 In addition, all proposed jury instructions should conform to  
23 the format of the Example Jury Instruction attached to this  
24 Order. Not less than ten days prior to the pretrial  
25 conference, the parties shall serve and file any objections to  
26 separately proposed jury instructions.

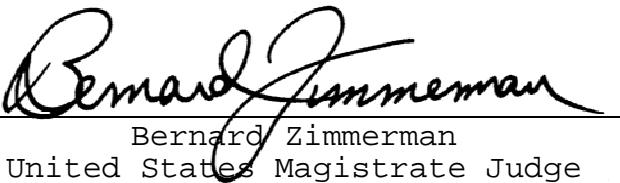
27  
28 Jury instructions that the Court has given in prior cases

1 may be downloaded from the Northern District website at  
2 <http://www.cand.uscourts.gov>. (Instructions are located on  
3 the "Judge Information" page for Magistrate Judge Zimmerman.)  
4 The Court will generally give the same instructions in cases  
5 involving similar claims unless a party establishes, with  
6 supporting authorities, that the instruction is no longer  
7 correct or that a different instruction should be given. CACI  
8 instructions generally will be given instead of BAJI  
9 instructions.

10 All proposed jury instructions, Daubert motions, motions  
11 in limine, forms of verdict and trial briefs shall be  
12 accompanied by a floppy diskette containing a copy of the  
13 document formatted in WordPerfect 6.1, 8, 9, 10 or 13  
14 (Windows), or may be e-mailed to the following address:  
15 bzpo@cand.uscourts.gov.

16 At the time of filing the original with the Clerk's  
17 Office, two copies of all documents (but only one copy of the  
18 exhibits) shall be delivered directly to Chambers (Room 15-  
19 6688). Chambers' copies of all pretrial documents shall be  
20 three-hole punched at the side, suitable for insertion into  
21 standard, three-ring binders.

22 Dated: October 3, 2007

23  
24   
25 Bernard Zimmerman  
United States Magistrate Judge

26  
27 G:\BZALL\~-BZCASES\JULATON\Order Trial Setting.wpd  
28

1                   **EXAMPLE PROPOSED JURY INSTRUCTION**  
2                   **For Chambers of Magistrate Judge Zimmerman**

3                   A proposed jury instruction should contain the following  
4                   elements in the following order: (1) the name of the party  
5                   submitting the instruction; (2) the title of the instruction;  
6                   (3) the text of the instruction; (4) the authority for the  
7                   instruction; (5) blank boxes for the Court to note whether it  
8                   gives the instruction, refuses to give it, or gives it as  
9                   modified. The following proposed instruction contains these  
10                  elements.

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11                  \_\_\_\_\_'s Proposed Instruction No. \_\_\_\_\_.  
12                  (Party)

13                  [Title]

14                  [Text]

15  
16  
17  
18  
19  
20  
21  
22  
23                  [Authority]

24  
25                  \_\_\_\_ GIVEN        \_\_\_\_ REFUSED        \_\_\_\_ GIVEN AS MODIFIED

**ATTACHMENT 1**

The parties shall file a joint pretrial conference statement containing the following information:

### (1) The Action.

- (A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.
- (B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

- (A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- (B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.
- (C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.
- (D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

### ( 3 ) Trial Preparation.

A brief description of the efforts the parties have made to resolve disputes over anticipated testimony, exhibits and witnesses.

- (A) Witnesses to be Called. In lieu of FRCP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.
- (B) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.
- (C) Use of Discovery Responses. In lieu of FRCP 26(a)(3)(B), cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, from interrogatory answers, or from responses to requests for admission. Counsel shall state any objections to use of these materials and that counsel has conferred respecting such objections.
- (D) Further Discovery or Motions. A statement of all remaining motions, including motions in limine.

#### (4) Trial Alternatives and Options.

- (A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.
- (B) Amendments, Dismissals. A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses.
- (C) Bifurcation, Separate Trial of

1                   Issues. A statement of whether  
2 bifurcation or a separate trial  
of specific issues is feasible  
and desired.

3                   **(5) Miscellaneous.**

4                   Any other subjects relevant to the trial of the action,  
5 or material to its just, speedy and inexpensive determination.

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1                           **ATTACHMENT 2**

2                           **USDCUSDC**

3                           Case No. CV07-02149 BZ Case No. CV07-02149 BZ

4                           **JOINT** Exhibit No. \_\_\_\_\_ **JOINT** Exhibit No. \_\_\_\_\_

5                           Date Entered \_\_\_\_\_ Date Entered \_\_\_\_\_

6                           Signature \_\_\_\_\_ Signature \_\_\_\_\_

7                           **USDC**

8                           Case No. CV07-02149 BZ

9                           **JOINT** Exhibit No. \_\_\_\_\_

10                          Date Entered \_\_\_\_\_

11                          Signature \_\_\_\_\_ Signature \_\_\_\_\_

12                          **USDC**

13                          Case No. CV07-02149 BZ

14                          **JOINT** Exhibit No. \_\_\_\_\_

15                          Date Entered \_\_\_\_\_

16                          Signature \_\_\_\_\_

17                          **USDC**

18                          Case No. CV07-02149 BZ

19                          **PLNTF** Exhibit No. \_\_\_\_\_

20                          Date Entered \_\_\_\_\_

21                          Signature \_\_\_\_\_

22                          **USDC**

23                          Case No. CV07-02149 BZ

24                          **PLNTF** Exhibit No. \_\_\_\_\_

25                          Date Entered \_\_\_\_\_

26                          Signature \_\_\_\_\_

27                          **USDC**

28                          Case No. CV07-02149 BZ

29                          **PLNTF** Exhibit No. \_\_\_\_\_

30                          Date Entered \_\_\_\_\_

31                          Signature \_\_\_\_\_

32                          **USDC**

33                          Case No. CV07-02149 BZ

34                          **DEFT** Exhibit No. \_\_\_\_\_

35                          Date Entered \_\_\_\_\_

36                          Signature \_\_\_\_\_

37                          **USDC**

38                          Case No. CV07-02149 BZ

39                          **DEFT** Exhibit No. \_\_\_\_\_

40                          Date Entered \_\_\_\_\_

41                          Signature \_\_\_\_\_

42                          **USDC**

43                          Case No. CV07-02149 BZ

44                          **DEFT** Exhibit No. \_\_\_\_\_

45                          Date Entered \_\_\_\_\_

46                          Signature \_\_\_\_\_